UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA,	:	CRIMINAL CASE NO.
	:	3:18-CR-00220-JCH
	:	
v.	:	
	:	
	:	
VASHAUN LEWIS,	:	NOVEMBER 19, 2019
Defendant.	:	

RULING RE: MOTIONS TO SUPPRESS (Docs. No. 51 and 55)

I. INTRODUCTION

Defendant Vashaun Lewis ("Lewis") filed a Motion to Suppress Evidence on August 23, 2019. See Lewis' First Motion to Suppress Evidence ("Mot.") (Doc. No. 51). In this Motion, Lewis seeks to suppress evidence gathered during a search of his apartment and back porch executed pursuant to a search warrant. Lewis argues that 1) the information in the search warrant did not support a finding of probable cause and 2) the search of his back porch was beyond the scope of the search warrant. On September 13, 2019, Lewis filed a Second Motion to Suppress Evidence ("Second Mot.") (Doc. No. 55). In his Second Motion to Suppress, Lewis argues that the information contained in the warrant's supporting Affidavit contained erroneous information which was material to the judge's finding of probable cause. Lewis provided a sworn affidavit which supported this argument.

The Government argues that the judge had sufficient probable cause to issue the search warrant and that Lewis lacks standing to suppress the items seized from the porch. As to the argument raised in Lewis' Second Motion to Suppress, the

Government argues that Lewis' Affidavit has no bearing on the validity or veracity of the search warrant.

For the reasons that follow, the court denies Lewis' Motions to Suppress.

II. BACKGROUND

On May 30, 2017, Connecticut Superior Court Judge Melanie Cradle signed a search and seizure warrant authorizing New Haven Police Department ("NHPD") officers to search Lewis' apartment at "200 Winthrop Avenue, 2nd floor" and basement, New Haven, Connecticut for cigarettes, tobacco, tobacco related products, and other relevant evidence. See Affidavit and Application for Search and Seizure Warrant (Doc. No. 51), Ex. A at 14. The warrant was based on the Affidavit of NHPD Detectives Orlando Crespo and Mark Decarvalho. See Ex. A ("Affidavit") at 15. In their Affidavit, the detectives testified to receiving information from a confidential informant ("CI") describing how Lewis was engaged in a large-scale illegal cigarette trafficking operation, that he sold marijuana and heroin, and that he had been seen in possession of a dark colored .40 caliber handgun. Id. ¶¶ 3, 4, 9. The CI stated that he/she had been inside Lewis' apartment on several occasions, id. ¶ 9, and that "during the last week of May 2017 he/she saw approximately twelve boxes containing several cartons of cigarettes, approximately three to four bundles of heroin, and approximately one pound of marijuana in Lewis' bedroom located at 200 Winthrop Avenue, 2nd floor New Haven, Connecticut," id. ¶ 4.

On June 1, 2017, NHPD officers executed the search warrant. Inside of the apartment, the officers located six cardboard boxes of cigarettes, over $1,000 in cash, sixteen grams of a green substance believed to be marijuana, and other drug-related

materials. See Government's Response in Opposition ("Gov't Resp."), Ex. 1 (Doc. No. 52-1) at 10. Additionally, in a laundry basket "on the small porch next to the rear common door," NHPD officers located additional evidence including one black nine-millimeter handgun and additional drug-related evidence. Id. at 18.

III. PROCEDURAL HISTORY

A Franks hearing was held on October 3, 2019. At the hearing, the court ruled that, because the back porch is a common area, Lewis does not have standing to suppress the evidence found in the back porch. See Suppression Transcript ("Tr.") (Doc. No. 85), at 30:14–32.

The hearing then proceeded on the remaining aspects of Lewis' Motions to Suppress. The Government called as a witness Det. Orlando Crespo, a detective in the NHPD's Criminal Intelligence Unit.[1] Tr. at 33:22. Det. Crespo investigated information provided by a confidential informant ("CI") regarding Lewis, and authored the Affidavit supporting the search warrant application. Tr. at 35:12-18, 36:10-13. Det. Crespo testified to the information the CI provided him, his execution of the search warrant, and his post-arrest interview with Lewis. On cross-examination, Lewis' counsel further questioned Det. Crespo on the CI and the information he/she provided to Det. Crespo. Id. at 62-66.

Following Det. Crespo's testimony and a brief recess, the Government informed the court at sidebar that Det. Crespo, in an effort to protect the identity of the CI, had provided less than complete answers during his cross-examination.[2] The court then

[1] The Government also called as a witness Sean Brackett. Tr. at 74:18-20. Lewis did not testify.

[2] The disclosure of the identity of the CI had been discussed several times previously, and the court declined to order the Government to identify the CI.

ordered the Government to submit an affidavit, under seal, setting forth (1) the criminal convictions of the CI, and (2) the substance of the additional information that Det. Crespo did not disclose in response to questions put to him by defense counsel on cross-examination. Tr. at 95–111. The court further ordered that the sealed affidavit would be treated as "attorneys' eyes only." Id. at 97.

The following day, the Government filed the sealed Affidavit of Det. Crespo. See Affidavit of Detective Crespo ("Sealed Affidavit") (Doc. No. 73). In response to Det. Crespo's Sealed Affidavit, Lewis' counsel argues that 1) the criminal history about the CI is inadequate, 2) the additional information provided by Det. Crespo lacks corroboration, and 3) the Sealed Affidavit violates Lewis' Confrontation Clause rights. See Response to Sealed Affidavit ("Def. Resp.") (Doc. No. 86).

IV. DISCUSSION

A. Probable Cause

The Fourth Amendment provides that "no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized." U.S. Const. Amend. IV. "Probable cause exists if a law enforcement official, on the basis of the totality of the circumstances, has sufficient knowledge or reasonably trustworthy information to justify a person of reasonable caution in believing that an offense has been or is being committed by the person to be arrested." United States v. Gagnon, 373 F.3d 230, 236 (2d Cir. 2004). Probable cause may be based upon information from an informant so long as the tip bears sufficient "indicia of reliability." Illinois v. Gates, 462 U.S. 213, 233 (1983). Whether an informant's tip establishes probable cause is assessed under the

totality of the circumstances approach set forth by the Supreme Court in Gates, under which the informant's "veracity," "reliability," and "basis of knowledge," as well as "the extent to which an informant's statements . . . are independently corroborated" are all relevant factors. Gagnon, 373 F.3d at 235 (citing Gates, 462 U.S. at 230). The Supreme Court and the Second Circuit have emphasized that the probable cause analysis is "a practical, common sense decision" based on the totality of the circumstances rather than on the satisfaction of discrete criteria. Id. at 238; see also United States v. Delossantos, 536 F.3d 155, 159 (2d Cir. 2008). "[A] deficiency in one may be compensated for, in determining the overall reliability of a tip, by a strong showing as to the other, or by some other indicia of reliability." Gates, 462 U.S. at 233.

"Determinations by magistrates and judges who issue warrants are 'accorded great deference and any doubts should be resolved in favor of upholding the warrant[s].'" United States v. Jakobetz, 955 F.2d 786, 803 (2d Cir.1992) (quoting United States v. Vasquez, 634 F.2d 41, 45 (2d Cir. 1980)). "In addition, courts should not invalidate [a] warrant by interpreting the [supporting] affidavit in a hypertechnical, rather than a commonsense, manner. Although in a particular case it may not be easy to determine when an affidavit demonstrates the existence of probable cause, the resolution of doubtful or marginal cases in this area should be largely determined by the preference to be accorded to warrants." United States v. Smith, 9 F.3d 1007, 1012 (2d Cir. 1993) (internal quotations and citations omitted) (alterations in original). As such, a defendant "who argues that a warrant was issued on less than probable cause faces a heavy burden." Rivera v. United States, 928 F.2d 592, 602 (2d Cir. 1991).

In his Motions to Suppress, Lewis argues that there were not enough facts set forth in the Affidavit to satisfy the veracity and basis of knowledge of the confidential informant. See Mot. at 6; Second Mot. at 7. Specifically, Lewis first contends that the Affidavit contains no assertions that the CI had provided reliable information in the past or how the CI came to the attention of law enforcement. Mot. at 7; Second Mot. at 7. Lewis further contends that the CI lacked reliability because he/she informed the detectives that he/she had seen Lewis in possession of a .40 caliber handgun, a "substantially different" gun than the nine-millimeter handgun the police seized. Mot. at 7; Second Mot. at 8.

Lewis' arguments are unavailing. As to Lewis' first contention, "it is improper to discount an informant's information simply because he has no proven record of truthfulness or accuracy." United States v. Wagner, 989 F.2d 69, 73 (2d Cir. 1993) (citing Gates, 462 U.S. at 237–38). Lewis' argument regarding the lack of information of the CI's criminal history, raised in the Response to Det. Crespo's sealed Affidavit, Def. Resp. at 2, is similarly unavailing. In his Response, Lewis' counsel argues that, because the criminal history of the CI is supposedly inadequate, the court should order Det. Crespo to disclose whether he was aware of the underlying facts of the CI's crimes that Det. Crespo listed in his Sealed Affidavit. Def. Resp. at 2-3. However, during the Hearing, Det. Crespo already addressed this issue:

> THE COURT: There was something I wanted to ask from your direct examination. The Government counsel asked you about the criminal history of the C.I. You said it is not your practice to include that for among other reasons, your concern about identification of the C.I. when it is not permitted, is that right?
>
> THE WITNESS: Yes.

> THE COURT: Were you aware, though, at the time you did your affidavit of whether the C.I. had a criminal history?
>
> THE WITNESS: Yes.
>
> THE COURT: You were. So you had checked that?
>
> THE WITNESS: Any time we do C.I. packages, we have to include criminal history picture and fingerprints before the chief, assistant chief or chief approves it.
>
> THE COURT: Do you remember reviewing the criminal history? Looking at the rap sheet, I assume is what you had.
>
> THE WITNESS: Yes, Your Honor.
>
> THE COURT: Do you remember seeing on that any convictions that would cause you to question the C.I.'s veracity? For example, a conviction for the perjury or fraud or something look that?
>
> THE WITNESS: Not that I recall, no.
>
> THE COURT: So nothing you saw in reviewing the criminal history caused you to think that this C.I.'s reputation for veracity could be questioned?
>
> THE WITNESS: No. I didn't see anything.

Tr. at 71:9-72:11. Following this exchange, Defense counsel was given the opportunity for recross-examination. Id. at 72:25–73:16. The court finds that Det. Crespo's testimony was credible and supports a finding that the CI's criminal history did not contain any convictions that would call into question the CI's veracity.

The court therefore concludes that the lack of information regarding the CI's criminal history contained in the Affidavit supporting the warrant application does not render the warrant invalid. On this issue, the Second Circuit has held that:

> [I]n order to suppress evidence obtained through the use of an allegedly insufficient search warrant, a defendant must prove that: "(1) the claimed inaccuracies or omissions are the result of the affiant's deliberate falsehood or reckless disregard for the truth; and (2) the alleged falsehoods or omissions were necessary to the [issuing] judge's probable

> cause finding." Probable cause can exist despite the omission of an informant's criminal history if that history does not bear upon the informant's veracity, and if the informant had first-hand knowledge that was corroborated in some way.

United States v. Soto, 52 F. App'x 534, 535 (2d Cir. 2002) (summary order) (quoting United States v. Canfield, 212 F.3d 713, 717-18 (2d Cir.2000)). As to the first consideration, Lewis does not claim that the omission of the CI's criminal history was the result of Det. Crespo and Det. Decarvalho's reckless disregard for the truth. Det. Crespo testified that he had reviewed the CI's criminal history and found nothing that would question the CI's veracity. Tr. at 71:9-72:11. After deciding that the CI's criminal history did not raise a question of veracity, he decided to omit the information. Furthermore, Det. Crespo had concerns that including the criminal history might reveal the CI's identity, which was the subject of his Sealed Affidavit. The court does not find that Det. Crespo's actions in this regard constituted a reckless disregard for the truth. As to the second consideration, Lewis does not argue that the alleged omissions were necessary to the issuing judge's probable cause finding. In short, the lack of information in the supporting Affidavit related to the CI's criminal history does not render the search warrant invalid.

Lewis' second argument— that the CI lacked reliability because he/she misidentified the handgun ultimately seized—is similarly unavailing. The search warrant authorized NHPD officers to search the apartment for cigarettes, tobacco, tobacco related products, and related items – not illegal firearms. The CI's tip about a handgun that was not ultimately on site at the time of the search does not undermine the judge's finding of probable cause as it pertains to the evidence related to Lewis' alleged illegal cigarette trafficking operation. Nor does the CI's handgun tip cause the court to

question the CI's credibility, or Det. Crespo's credibility about the CI. That a firearm, easily movable, that the CI stated was in the apartment at some time prior to the search, was not present at the time of the search, does not mean it was not present at the time that the CI said it was there. In other words, its absence at the time of the search does not prove that it was not there previously.

More importantly, the court agrees with the Government's assertion that probable cause supported the search warrant. The Affidavit explained that the CI knew Lewis, and "knew from personal knowledge" that Lewis illegally trafficked cigarettes from Virginia and resold them in Connecticut. Ex. A ¶ 3. During the Hearing, Det. Crespo testified that this information was corroborated, and the court considers his testimony credible. See Tr. 70 at 11-15. The Affidavit further explained that "the CI . . . had been inside of [the apartment] on numerous occasions," id. ¶ 9, and that "during the last week of May 2017 he/she saw approximately twelve boxes containing several cartons of cigarettes, approximately three to four bundles of heroin and approximately one pound of marijuana in Lewis' bedroom located at 200 Winthrop Avenue, 2nd floor New Haven, Connecticut." Id. ¶ 4. Such information establishes an adequate basis for the CI's knowledge. See United States v. Hernandez, 85 F.3d 1023, 1028 (2d Cir. 1996) ("We think that such '[a] detailed eye-witness report of a crime is self-corroborating; it supplies its own indicia of reliability.'") (quoting United States v. Elliott, 893 F.2d 220, 223 (9th Cir. 1990)); see also Massachusetts v. Upton, 466 U.S. 727, 733–34 (1984) (finding probable based on the informant's coherent and detailed description of the nature and location of the goods).

Even more, Det. Crespo determined that Lewis was previously arrested for the "Sale of Unstamped Cigarettes Prohibited and Sales of Cigarettes without a license." Ex. A ¶ 5. Such a finding can support a judge's finding of probable cause. United States v. Jakobetz, 955 F.2d 786, 803 (2d Cir. 1992) ("[T]he fact that, in determining probable cause, a judicial officer may take into account a prior similar arrest is not error."). Det. Crespo further determined that Lewis did not have a license to sell cigarettes in Connecticut. Ex. A ¶ 6. These details, when considered as a whole, demonstrate that the search warrant was supported by probable cause. See United States v. Ventresca, 380 U.S. 102, 109–10 (1965) (finding that an affidavit is sufficient if it details "some of the underlying circumstances supporting the affiant's conclusions and his belief that any informant involved whose identity need not be disclosed was credible or his information reliable") (internal quotations omitted).

B. The Good Faith Exception

Assuming, arguendo, that Judge Cradle's search warrant lacked probable cause, the good faith exception would undoubtedly preclude the suppression of the evidence seized during the execution of the search warrant. It is well-settled that evidence obtained by officers "in objectively reasonable reliance" on a warrant subsequently invalidated by a reviewing court is not generally subject to exclusion. United States v. Leon, 468 U.S. 897, 922 (1984). When an officer genuinely believes that he has obtained a valid warrant from a magistrate and executes that warrant in good faith, there is no conscious violation of the Fourth Amendment, "and thus nothing to deter." Id. at 920–21.

However, "the good faith exception cannot shield even an officer who relies on a duly issued warrant in at least four circumstances: '(1) where the issuing magistrate has been knowingly misled; (2) where the issuing magistrate wholly abandoned his or her judicial role; (3) where the application is so lacking in indicia of probable cause as to render reliance upon it unreasonable; and (4) where the warrant is so facially deficient that reliance upon it is unreasonable.'" United States v. Raymonda, 780 F.3d 105, 118 (2d Cir. 2015) (citing United States v. Clark, 638 F.3d 89, 100 (2d Cir.2011)). Lewis does not allege that the issuing magistrate was knowingly misled or abandoned her judicial rule. To the extent that Lewis suggests that the warrant application was "so lacking in indicia of probable cause" or "so facially deficient" as to render reliance upon it unreasonable, this court disagrees. Given the indicia of reliability contained in the Affidavit, this court concludes that the officers' good faith reliance on the search warrant was objectively reasonable.

C. Lewis' Second Motion to Suppress

As noted above, the good faith exception would not apply if Det. Crespo had knowingly misled Judge Cradle. Raymonda, 780 F.3d at 118. In his Second Motion to Suppress, Lewis argues that, contrary to the information provided by the Supporting Affidavit, there was no CI present with him in his apartment during the last week of May 2017, and that, therefore, Det. Crespo "submitted an affidavit to Judge Cradle that was either a deliberate falsehood or a reckless disregard for the truth." Second Mot. at 11. Lewis supported this argument with his Affidavit, wherein he affirmed that he "did not occupy nor stay at [his] place of residence located at 200 Winthrop Avenue" and that he "had no visitors that were present at that location during the last week of May 2017."

Ex. C, Affidavit of Vashun Lewis ("Lewis Aff.") (Doc. No. 56), ¶¶ 3, 4. Based on these affirmations, the court conducted a Franks hearing on October 3, 2019.

During the hearing, Det. Crespo testified as to existence of the CI. Tr. at 36:7-9. The court found this testimony to be credible. Furthermore, both government witnesses provided credible testimony that seriously calls into question the veracity of the information provided in Lewis' Affidavit. For example, Det. Crespo testified that, at the time he executed the search warrant, Lewis' apartment appeared to have been lived in. Id. at 44:19-20. During the post-arrest interview, Lewis listed 200 Winthrop Avenue as his address and made no mention of living in another location. Id. at 47:18-22. Lewis admitted to Det. Crespo seeing him on his front porch just days before the June 1 execution of the search warrant. Id. at 50:8-20. Special Agent Sean Brackett similarly provided credible testimony suggesting that Lewis occupied his 200 Winthrop Avenue apartment during the last week of May 2017. Special Agent Brackett testified that a search of the text messages from Lewis' phone revealed that Lewis sent messages telling others that he was "at [his] crib" on May 27, 2017. Tr. at 83:5-17. Special Agent Brackett also testified that GPS location data recovered from the photos on the phone demonstrate that the phone was within close proximity of the 200 Winthrop Avenue address during the last week of May 2017. Tr. 85:14-22.

Based on the testimony of Det. Crespo and Special Agent Brackett, which the court found credible, the court concludes that the CI existed and that Lewis occupied his apartment during the last week of May 2017. Because the Det. Crespo did not mislead Judge Cradle as to the existence of the CI or act with reckless disregard for the truth, the good faith exception would apply even if the warrant lacked probable cause.

D. The Sealed Affidavit and Lewis' Confrontation Clause rights

Finally, Lewis' counsel contends that Det. Crespo's Sealed Affidavit, which is "attorney's eyes only", violates Lewis' right under the Confrontation Clause of the Sixth Amendment of the United States Constitution, which provides that "[i]n all criminal prosecutions, the accused shall enjoy the right . . . to be confronted with the witnesses against him." U.S. Const. amend. VI. The court disagrees. As defense counsel concedes, "most courts that have considered the issue have held that the Confrontation Clause . . . does not apply to suppression hearings, or other non-trial proceedings." Def. Resp. at 5; see, e.g., United States v. Shaw, No. 16-CR-642 (RJS), 2017 WL 1380598, at *7 (S.D.N.Y. Apr. 13, 2017) ("[T]his court . . . concludes that the Sixth Amendment right to confrontation does not apply to pretrial suppression hearings."); Robles v. Lempke, 2011 WL 9381499, at *32 (E.D.N.Y. Sept. 9, 2011) (collecting cases).

Lewis' counsel notes that, in at least one case, United States v. Clark, the Second Circuit appeared to have applied the Confrontation Clause to a pretrial suppression hearing. 475 F.2d 240, 246–47 (2d Cir. 1973) ("exclusion of the defendant" from a pretrial suppression hearing violated the Confrontation Clause, since Defendant was "entitled to assist his counsel in cross-examining [the government's] witnesses and in developing these matters further at the suppression hearing"). However, Clark "has not been cited in this circuit for that proposition for several decades and has been displaced by controlling Supreme Court precedent recognizing that the right to confrontation attaches at trial, but not to pretrial suppression proceedings." Shaw, 2017 WL 1380598, at *7.

Subsequent to Clark, the Supreme Court, in United States v. Raddatz, noted that, "[a]t a suppression hearing, the court may rely on hearsay and other evidence, even though that evidence would not be admissible at trial," since the "interests at stake in a suppression hearing are of a lesser magnitude than those in the criminal trial itself" and "the process due at a suppression hearing may be less demanding and elaborate than the protections accorded the defendant at the trial itself." 447 U.S. 667, 679 (1980). Similarly, a plurality of the Supreme Court noted in Pennsylvania v. Ritchie that "the right to confrontation is a trial right, designed to prevent improper restrictions on the types of questions that defense counsel may ask during cross-examination." 480 U.S. 39, 52–53 (1987) (emphasis in original) (plurality opinion).

In light of this authority from the Supreme Court, the Seventh Circuit and several district court judges within this Circuit have concluded that the Confrontation Clause does not attach to pretrial suppression hearings. See, e.g., Erbert v. Gaetz, 610 F.3d 404, 414 (7th Cir. 2010) ("[B]ecause the court considered the statement at a suppression hearing, not [the defendant's] trial[,] the Confrontation Clause was not implicated."); Wilkerson v. N.Y. State Bd. of Parole, No. 13-cv-3817 (GHW), 2015 WL 678581, at *19 & n.5 (S.D.N.Y. Feb. 17, 2015) (same); Shaw, 2017 WL 1380598, at *7; Robles, 2011 WL 9381499, at *32. The court agrees with the reasoning of those courts and concludes that the Sixth Amendment right to confrontation does not apply to pretrial suppression matters. Therefore, Det. Crespo's Sealed Affidavit does not violate Lewis' rights under the Confrontation Clause of the Sixth Amendment.

V. CONCLUSION

For the foregoing reasons, Lewis' Motions to Suppress Evidence (Doc. No. 51

and 55) are **DENIED.**

SO ORDERED.

Dated at New Haven, Connecticut, this 19th day of November, 2019.

/s/ Janet C. Hall
Janet C. Hall
United States District Judge